

Hugh Hagan
Public Records Team
National Records of Scotland

By email public_records@nrscotland.gov.uk

11 March 2019

Dear Hugh

Consultation on the revised Model Records Management Plan

1. The Information Commissioner welcomes the opportunity to respond to the Keeper of the Records of Scotland's consultation on the revised Model Records Management Plan (RMP) for authorities listed in the Public Records (Scotland) Act 2011.
2. The Commissioner has responsibility for promoting and enforcing the EU General Data Protection Regulation (GDPR), the UK Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, as well as the Freedom of Information Act 2000, the Environmental Information Regulations 2004 which apply to reserved matters in Scotland.
3. The Commissioner is independent of government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

The revised model Records Management Plan

4. The Information Commissioner welcomes the retention of a data protection element to the model RMP, and the 'seeding' of data protection throughout the various elements. While they are different regulatory regimes with different scopes, good records management will support good data protection practices and vice versa. Indeed, the ICO often advised authorities to look to their RMP as a starting point for their GDPR preparations.

5. The Commissioner welcomes the use of the phrase “data protection law” in the revised Model RMP. This will future-proof the Model RMP against any changes to data protection law in the coming years.
6. Also, some authorities will have one or more statutory law enforcement functions. The use of personal data for those functions is governed by Part 3 of the Data Protection Act 2018 (the DPA), rather than the GDPR. The requirements are similar but there are certain specific differences, including more rigorous audit trail requirements that will assist with element 11 of the revised Model RMP. “Data protection law” can encompass the various frameworks that exist under all legislative instruments relating to data protection.

Future cooperation

7. The Commissioner looks forward to further cooperation with the Keeper to ensure that evidence of compliance with both frameworks can be dovetailed, a desire that was expressed by the Stakeholder Forum.
8. The Commissioner will also continue to produce guidance and templates where appropriate to support data controllers in complying with data protection law. This will include publishing a revised data sharing code of practice in 2019 which should assist with element 14 of the revised Model RMP.

Yours sincerely

Maureen Falconer
Regional Manager – Scotland